

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**UNITED STATES OF AMERICA,
Plaintiff,**

v.

**MIGUEL HERNANDEZ-REYES,
Defendant.**

No. 10 - CR - 30230 DRH

ORDER

HERNDON, Chief Judge:

Before the Court is defendant Miguel Hernandez-Reyes's Motion for a Nonjury Trial (Docs. 30 & 31) seeking to waive his right to a jury trial in this matter. Defendant's Motion is in writing and includes his signature (Doc. 31), and the Government has consented to Defendant's Motion (Doc. 32). According to the **RULES OF CRIMINAL PROCEDURE**, "[i]f the defendant is entitled to a jury trial, the trial must be by jury unless: (1) the defendant waives a jury trial in writing; (2) the government consents; and (3) the court approves." **FED. R. CRIM. PRO. 23**. A waiver must be with the defendant's express, intelligent consent. ***Singer v. United States*, 380 U.S. 24, 34 (1965) (quoting *Adams v. United States ex rel McCann*, 317 U.S. 269, 277 (1942))**. In addition, the duty of the trial court in approving a waiver "is not to be discharged as a mere matter of rote, but with sound and advised discretion," ***Id.* (quoting *Patton v. United States*, 281 U.S. 276, 312 (1930))**.

To ensure that Defendant's waiver is based on his express, intelligent consent,

the Court will conduct an oral colloquy before trial, on the record. Consequently, Defendant's Motion for a Nonjury Trial (Docs. 30 & 31) is hereby **GRANTED, pending final approval of Defendant's waiver by the Court.** Defendant's current jury-trial setting of Monday, March 21, 2011, at 9:00 a.m., is hereby canceled. A bench trial will be set for **Tuesday, March 22, 2011, at 9:30 a.m.**

IT IS SO ORDERED.

Signed this 17th day of March, 2011.

 Digitally signed by
David R. Herndon
Date: 2011.03.17
09:33:55 -05'00'

**Chief Judge
United States District Court**